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CHARLES ELMORE GRO
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

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# No. 1011

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ALTON RUFUS PESNELL,

*Petitioner,*

*vs.*

DEPARTMENT OF INDUSTRIAL RELATIONS OF ALABAMA.

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**PETITION OF ALTON RUFUS PESNELL FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA AND BRIEF AND ARGUMENT IN SUPPORT THEREOF.**

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*Of Counsel.*

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DEPARTMENT OF INDUSTRIAL RELATIONS OF ALABAMA.

## PETITION OF ALTON RUFUS PESNELL FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA AND BRIEF AND ARGUMENT IN SUPPORT THEREOF.

*To the Honorable the Chief Justice of the Supreme Court of the United States, and the Associate Justices of the Supreme Court of the United States:*

Petitioner respectfully prays issuance of a Writ of Certiorari to review the judgment of the Supreme Court of Alabama, entered November 28, 1940 (R. 284), refusing to grant a Writ of Certiorari to the Court of Appeals of Alabama for the annullment of its decree entered August 6, 1940 (R. 272), reversing a decree of the Circuit Court of the Tenth Judicial Circuit of Alabama, entered July 22, 1939 (R. 24), granting benefits to petitioner under the Alabama

Unemployment Compensation Act (Acts of Alabama of 1935, page 950). Application for rehearing to the Supreme Court of Alabama of its decision of November 28, 1940, was overruled on January 23, 1941 (R. 288).

The opinion of the Court of Appeals of Alabama, above referred to, has not been officially reported, but has been reported in Advance Sheet No. 6 of 199 Southern Reporter page 720. The decision of the Supreme Court of Alabama, above referred to, is reported in the same Advance Sheet of 199 Southern Reporter on page 726, the latter report being one denying the Writ of Certiorari on November 28, 1940, and also reporting the denial of the rehearing on January 23, 1941.

**Statement of Matter Involved.**

Petitioner, a citizen of Jefferson County, Alabama, was a coal miner employed in the Edgewater Mines of the Tennessee Coal, Iron & Railroad Company, a subsidiary of the United States Steel Corporation (R. 38). The general coverage contract fixing wages, time and other conditions of work for petitioner and others so employed expired April 1, 1939 (R. 41). The petitioner with others so employed had named John L. Lewis, Philip Murray, and Thomas Kennedy as their bargaining agents for the preparation of a new contract (R. 68-69). On the 31st day of March, 1939, petitioner's employer posted at the mine a stop-work notice, effective April 1, 1939 (R. 38-39). Similar notices were published from time to time until May 18, 1939, when a new contract was executed and work resumed (R. 39, 140, 144). The Alabama contract of mining coal is based on the Appalachian contract (R. 142). John L. Lewis and others, named as bargaining agents for petitioner and his associates, began bargaining with employers of the Appalachian fields on the 14th day of March, 1939 (R. 117-132). These negotiations continued until May 13, 1939, when an

Appalachian contract was entered into by the employers and miners of the Appalachian field (R. 139-140). On May 18, 1939, a contract was entered into by the bargaining agents of petitioner and his associates with the employees of the Alabama territory (R. 140). On the same day petitioner and his associates returned to their work (R. 144).

On the 3rd day of April, 1939, petitioner filed claim for benefits under the Alabama Unemployment Compensation Act (R. 4). On the 24th day of April, 1939, the Deputy of the Department of Industrial Relations denied petitioner's claim (R. 5-7). Petitioner appealed to the Board of Appeals of the Department of Industrial Relations, which allowed his claim (R. 14-17). The Department of Industrial Relations appealed to the Circuit Court of the Tenth Judicial Circuit of Alabama, and such appeal was heard by said court beginning on July 12, 1939, and petitioner allowed benefits under the provisions of the Alabama Unemployment Compensation Act (R. 24). The opinion of said court appears in the Record on pages 23 and 24. The trial court held that there being no strike or lockout or exercise of force by employer or employee at the place where petitioner was working, and that as petitioner, through his bargaining agents, was merely collectively bargaining for a new contract, there was no labor dispute, as the term is used in Section 6 of the Alabama Unemployment Compensation Act (Acts of Alabama of 1935, page 950).

The Department of Industrial Relations of Alabama appealed to the Court of Appeals of Alabama. On August 6, 1940, the Court of Appeals entered a decree reversing the Circuit Court (R. 272-273). Application was then filed for a rehearing of such case by petitioner. On October 29, 1940, the Court of Appeals denied such application (R. 281). Petitioner then presented a Writ of Certiorari to the Su-

preme Court for a review of the Court of Appeals. On November 28, 1940, the Supreme Court of Alabama entered a decree denying such writ (R. 284-286). Petitioner filed an application for a rehearing of such decree, and on January 23, 1941, the Supreme Court of Alabama entered a decree overruling such application for rehearing (R. 288).

It was shown that petitioner was a member of the United Mine Workers of America, a Labor Union (R. 56).

It was also shown that petitioner had contributed out of his wages to the Unemployment Trust Fund the amount levied by the Alabama Unemployment Compensation Act, and was otherwise qualified, unless disqualified by reason of the provisions of Section 6 (d) of the Alabama Unemployment Compensation Act (R. 21).

**Jurisdictional Statement.**

The jurisdiction of the court is invoked under Supreme Court Rule 38, Section 5 (a), and under Section 344 (b), Title 28, United States Code Annotated, page 206, especially those alternatives which read as follows:

> "Or where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States."

The National Labor Relations Act and the Social Security Act establish the right to collective bargaining and the payment of unemployment benefits. The decision here sought to be reviewed renders the Alabama Unemployment Compensation Act repugnant to the Social Security Act and the National Labor Relations Act, in that it denies benefits to one who is collectively bargaining.

Collective bargaining and an employee's interest in the Unemployment Trust Fund are titles or rights protected by Federal statutes or by the Fourteenth Amendment to the Constitution of the United States, and the decision sought to be reviewed deprives petitioner of such rights.

The Unemployment Trust Fund created by the Federal Social Security Act, held by the United States of America, and administered by it in conjunction with the several States, makes the payment or non-payment of benefits therefrom a Federal question, and renders the decision of a State court, with reference thereto, subject to review by this Honorable Court.

The questions here presented were presented to the Court of Appeals of Alabama (R. 280) and to the Supreme Court of Alabama (R. 281, 286). The ruling of the Court of Appeals could not be anticipated and the questions were raised at the first opportunity.

This petition is presented within the time allowed by law, the decision of the Supreme Court of Alabama having been entered on November 28, 1940, and the application for rehearing of such ruling having been denied on January 23, 1941 (R. 288).

**Questions Presented.**

The foregoing presents the following questions for the consideration of this Court:

1. Does the decision of the Supreme Court of Alabama, interpreting "labor dispute" as used in Section 6 of the Alabama Unemployment Compensation Act (Acts of Alabama of 1935, page 950), so as to include mere argument or debate by representatives when bargaining for a new contract, and denying benefits, render said Alabama statute repugnant to the Federal law giving collective bargaining and unemployment benefits?

2. Is the right to collective bargaining, or the interest of an employee in the Unemployment Trust Fund, a title, right, privilege or immunity, protected under the Fourteenth Amendment to the Constitution of the United States, and does the interpretation of "labor dispute" and the denial of benefits, decreed by the Supreme Court of Alabama, give the Alabama statute a meaning which is in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, or of Federal statutes?

3. Does the coordination of the Social Security Act with the Alabama Unemployment Compensation Act, and with similar acts of other States, and the creation of the Unemployment Trust Fund held by the United States and jointly administered by it with the several States, make the payment or non-payment of benefits from such fund a Federal question, or are the decisions of the several States final as to the control and operation of such trust fund?

**Reasons for Allowance of Certiorari.**

1. The Supreme Court of Alabama has decided a Federal question of substance not theretofore determined by this Court.

2. The Supreme Court of Alabama has entered a decision which renders the Alabama Unemployment Compensation Act repugnant to the Social Security Act and the National Labor Relations Act of the United States, and has deprived petitioner and all other employees, working under the Social Security Act of the United States, of full rights to collective bargaining and unemployment benefits.

3. The Supreme Court of Alabama in its decision, here sought to be reviewed, has deprived petitioner and all other

employees, working under the Social Security Act of the United States, of the full enjoyment of their right to collective bargaining and to participation in unemployment benefits out of the Unemployment Trust Fund, created by the Social Security Act of the United States, in violation of the laws of the United States, and in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

4. Unless the decision of the Supreme Court of Alabama, denying Unemployment benefits to petitioner, is reviewed by this Honorable Court, it will leave the administration and control of the Unemployment Trust Fund, created by the Social Security Act of the United States, held by the United States in trust for employees coming under the Social Security Act, subject to control and operation by final decision from all of the States who have coordinated their Unemployment Acts with the Federal Government.

5. The Unemployment Trust Fund, being held by the United States and administered by it in conjunction with other States, should be controlled and administered under the decisions of this Honorable Court.

WHEREFORE the premises considered, petitioner respectfully prays that the writ of certiorari issue to the Supreme Court of Alabama to revise its judgment aforesaid and in that behalf respectfully submits the following brief and argument.

Respectfully submitted,

ROSSIE ROGERS,
*Attorney for Petitioner.*

HUGH A. LOCKE,
YELVERTON COWHERD,
*Of Counsel.*

## BRIEF AND ARGUMENT.

### I. Opinions Below.

The first decision of the State Courts in this case was the decision of the Circuit Court of the Tenth Judicial Circuit of Alabama (R. 24). This Court held that collective bargaining did not constitute a "labor dispute" and granted relief. The case was then appealed by the Department of Industrial Relations to the Court of Appeals of Alabama, which held (R. 273):

> "The Legislature in our opinion never intended for a member of a Union to draw unemployment benefits, while his bargaining agents are discussing the terms of a proposed contract where the Union itself has ordered work to cease until its terms are met." *Department of Industrial Relations* v. *Pesnell,* Advance Sheet No. 6, 199 Southern Reporter 720.

The section of the Alabama Unemployment Compensation law (Acts of Alabama of 1935, page 950), Section 6 (d), which the Court was interpreting, reads as follows:

> "During Trade Disputes. An employee shall not be eligible for benefits for any week in which his total or partial unemployment is directly due to a labor dispute still in active progress in the establishment in which he is or was last employed."

An application for a rehearing was filed by petitioner (R. 280), which application raised the Federal question here presented. This application was overruled (R. 281). Petitioner asked for a writ of certiorari in the Supreme Court of Alabama to the Court of Appeals for a review of the decision (R. 281-283). This petition for writ of certiorari to the Supreme Court raised the questions herein presented.

The Supreme Court of Alabama denied the writ. *Ex Parte Pesnell,* Advance Sheet No. 6, 199 Southern Reporter 726. The decision of the Supreme Court interpreting "labor dispute" in the same section above quoted says:

> "Our statute merely uses the words labor dispute without further definition and with no indication whatever a strike or lockout must result. A 'dispute' is a verbal controversy. 'To contend in argument; discuss, debate; often to argue irritably ; wrangle.' Webster's New International Dictionary, Second Edition. There appears therefore no foundation for the argument that the words labor dispute as used in the statute are to be interpreted as meaning a verbal controversy resulting in a strike or lockout."

It will be seen that this was a definite holding that the Court of Appeals was correct in saying that one employed, while bargaining through representatives for a new contract, was in a "labor dispute" and could collect no benefits under the Alabama statute. The Supreme Court denied the writ, without discussion of Federal questions.

An application for rehearing was filed in the Supreme Court. This application presented the questions raised here (R. 286).

This application for rehearing was overruled January 23, 1941 (R. 288).

## II. Jurisdiction.

The Court is respectfully referred to the jurisdictional statement at pages 4 and 5 of the petition as to the basis for jurisdiction and timeliness of presentation.

## III. Facts.

The facts are likewise summarized at pages 2 to 4 of the petition under Statement of Matter Involved.

## ARGUMENT.

### Summarization.

(A) The above interpretation of the Alabama Act renders it repugnant to the laws of the United States.

(B) The above interpretation of the Alabama Act by the Supreme Court here sought to be reviewed deprives petitioner of a title or right set up or claimed under the laws of the United States.

(C) The decision of the Supreme Court of Alabama here sought to be reviewed deprived petitioner of his liberty to contract in violation of the Fourteenth Amendment to the Constitution of the United States.

(D) Since the Social Security Act and the Alabama Unemployment Act and other State Acts have been coordinated, creating the Unemployment Trust Fund, held by the United States and administered by it jointly with the States, final jurisdiction of the payment or nonpayment of benefits is in this Court.

(E) The Supreme Court of Alabama has decided a Federal question of substance not theretofore determined by this Court.

(F) The questions here presented were presented to the State Court.

### (A) The above interpretation of the Alabama Act renders it repugnant to the laws of the United States.

Congress in the National Labor Relations Act stated the policy of the United States, with reference to collective bargaining. Title 29, Section 151, United States Code Anno-

tated, declares it "to be the policy of the United States to eliminate causes of certain substantial obstructions to the free flow of commerce * * * *by encouraging the practice and procedure of collective bargaining.*" In Section 157 of such Act (Title 29 U. S. C. A.) we find the following:

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, *to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining* or other mutual aid or protection."

Thus in the National Labor Relations Act the general policy of the United States is declared to be the encouragement of the practice and procedure of collective bargaining. The employee is definitely granted the right of collective bargaining.

The Alabama decision sought to be reviewed says, "The Legislature in our opinion never intended for a member of a Union to draw unemployment benefits *while his bargaining agents are discussing the terms of a proposed contract.*" They have declared that merely to contend in argument, discuss,, debate, offer to argue irritably, or wrangle, calls for the penalty.

The decision in effect is that if the employee would draw his benefits, he must surrender his right through his representatives to argue and to discuss terms and conditions of employment. The decision in effect is, settle before the contract expires, or you will be stripped of benefits.

This decision certainly does not "encourage" the practice and procedure of collective bargaining. It limits and penalizes the right to bargain collectively. It renders the Alabama Act repugnant to the National Labor Relations Act.

**(B) The above interpretation of the Alabama Act by the Supreme Court here sought to be reviewed deprives petitioner of a title or right set up or claimed under the laws of the United States.**

We shall first discuss the deprivation of the claim under the Social Security Act.

The Social Security Act of the United States and the Alabama Unemployment Act and similar acts of other States form a coordinated plan for the levying and collecting of taxes, the creation of an unemployment compensation fund, the payment of unemployment benefits, and generally the giving of Social Security against unemployment.

In the case of *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495, 57 Sup. Ct. Rep. 868, paragraph 19, we find the following:

> "The United States and the State of Alabama are not alien governments. They co-exist within the same territory. Unemployment within it is their common concern. Together the two statutes now before us embody a cooperative legislative effort by state and national governments for carrying out a public purpose common to both, which neither could fully achieve without the cooperation of the other."

In the case of *Charles C. Steward Mach. Co.* v. *Davis*, 301 U. S. 548, 57 Sup. Ct. 883, paragraph 13 of the opinion, we find the following:

> "The states are at liberty, upon obtaining the consent of Congress, to make agreements with one another. Constitution, Art. 1, Sec. 10, par. 3. * * * We find no room for doubt that they may do the like with Congress if the essence of their statehood is maintained without impairment. *Alabama is seeking and obtaining a credit of many millions in favor of her citizens out of the Treasury of the Nation. Nowhere in our scheme*

*of government—in the limitations express or implied of our Federal Constitution—do we find that she is prohibited from assenting to conditions that will assure a fair and just requital for benefits received.''*

This *Steward* case further holds that this Court judicially knows that the Alabama Unemployment Compensation Act has been approved by the Social Security Commission, created by the Social Security Act. This Court judicially knows that a trust fund for the payment of benefits has been created. This fund is now in the Treasury of the United States. Under the terms of the Act the benefits are collected and turned over to the Treasury of the United States. Alabama has received benefits out of this fund.

The Alabama Act is not complete in itself. It is a part of the Social Security Act. It is a part of the general policy and plan of coordinating governments to give social security to the unemployed.

Sub-section (d) of Section 3 of the Alabama Unemployment Compensation Act (Acts of Alabama of 1935, page 950), is as follows:

> ''(d) Deposits. All contributions paid under this Act shall upon collection be deposited in or invested in the obligations of the 'Unemployment Trust Fund' *of the United States Government or its authorized agents* so long as said trust fund exists, notwithstanding any other statutory provision to the contrary. *The commission shall requisition from the Unemployment Trust Fund necessary amounts from time to time.''*

Sub-section (b) of Section 3 of said Alabama Unemployment Compensation Act is as follows:

> ''(b) Withdrawals. The funds shall be administered in trust and used solely *to pay benefits,* upon vouchers drawn on the fund by the Commission, etc.''

Sub-section (d) of Section 4 of said Act contains the following:

> "(d) Contributions by employees. Each employee shall contribute to the fund one per centum of his wages earned after May 1, 1936 and after the date as of which the conditions determining whether or not his employer is or will be subject to the act have been fulfilled."

This petitioner has paid out of his wages monthly a contribution to this trust fund. This money paid by him to his State under the provisions of the Act above set forth has been turned over to the United States Government. It has been placed in a trust fund. The United States Government is the trustee. This trust was created, and this money can be used, solely to pay benefits.

This petitioner sets up in this petition for the Writ of Certiorari his claim, his title, his right, to this fund.

The decision of the Supreme Court of Alabama here sought to be reviewed has denied him the right to benefits. This interpretation has deprived him of his title and rights in such fund. It forfeited his rights to unemployment benefits because his unemployment occurred "while his bargaining agents are discussing the terms of a proposed contract." We have shown that this was contrary to general policy of the United States and the National Labor Relations Act. It is equally repugnant to the Social Security Act, with which the Alabama Unemployment Act is coordinated.

In the Social Security Act, Title 26 U. S. C. A., Section 1603 (a) (5), contains the following:

> "*Compensation shall not be denied in such state to any otherwise eligible individual* for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout or other labor dispute; * * * (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;"

The Social Security Board adopted a rule defining the words "labor dispute" under sub-section (A) above quoted, so as to include collective bargaining (R. 157-158). Such rule was necessary to justify an unemployed individual in refusing to take the job of one who was exercising the right of collective bargaining. It was done to protect and foster collective bargaining. The purpose of this Act is to foster collective bargaining. We hardly consider it necessary to argue that the Social Security Act passed at almost the same time as the National Labor Relations Act favored collective bargaining.

Paragraph (C) above quoted safeguards the unemployed employe against coercion as to the joining of a company union and safeguards his right to remain a member, or to join any union. This Court judicially knows that if this petitioner on April 1st had individually gone to his employer and sought work he would have forfeited his Union rights as well as his rights to collective bargaining.

In effect the decision of the Supreme Court of Alabama, here sought to be reviewed, required this petitioner to seek employment in other mines, where men were collectively bargaining, or deal individually with his employer, or forfeit his rights.

The decision has deprived this petitioner and thousands of others of their rights to unemployment benefits because they were collectively bargaining, as they were authorized to do under the National Labor Relations Act.

**(C) The decision of the Supreme Court of Alabama here sought to be reviewed deprived petitioner of his liberty to contract in violation of the Fourteenth Amendment to the Constitution of the United States.**

Under that decision if he debates or argues about wages, time, etc., and does not finish such debate until after his contract has expired and work has ceased, he must either debate separately, surrendering his right to collective bar-

gaining, or he will be penalized by being denied unemployment benefits.

We wish to cite the case of *Charles Wolff Packing Co.* v. *Court of Industrial Relations of the State of Kansas,* 262 U. S. page 522. This was a decision of the Supreme Court of the United States upon the Kansas Act providing for compulsory arbitration of "labor disputes." The Act was held unconstitutional and in its opinion this Honorable Court made the following statement:

> "The employer is bound by this Act to pay the wages fixed and, while the worker is not required to work, at the wages fixed, he is forbidden, on penalty of fine or imprisonment, to strike against them, and thus is compelled to give up that means of putting himself on an equality with his employer which action in concert with his fellows gives him."

Further on, the Court in the above case, in its opinion states as follows:

> "We think the Industrial Court Act, in so far as it permits the fixing of wages in plaintiff in error's packing house, is in conflict with the Fourteenth Amendment and deprives it of its property and liberty of contract without due process of law."

This decision says that the right to contract is protected by the Fourteenth Amendment. It says that the right to contract on equal basis with employer is protected by the Fourteenth Amendment. It says that he cannot be compelled to give up the right to act in concert with his fellows.

The decision of the Supreme Court of Alabama, here sought to be reviewed, requires the employee to give up his right to bargain collectively after the expiration of his contract or be penalized by loss of unemployment benefits.

We respectfully submit that this petitioner has been de-

prived of a title or right, which he sets up and claims under the Fourteenth Amendment to the Constitution.

**(D) Since the Social Security Act and the Alabama Unemployment Act and other State Acts have been coordinated, creating the Unemployment Trust Fund, held by the United States and administered by it jointly with the States, final jurisdiction of the payment or nonpayment of benefits is in this Court.**

Heretofore in this brief we have set forth the coordination of the Social Security Act with the Alabama Unemployment Compensation Act and similar acts of the various States in the United States, creating a general plan of social security and unemployment relief. We have shown how under the Social Security Act and the State Act there has been created an Unemployment Trust Fund held by the United States. We have shown how this fund was created solely to pay benefits for unemployment. In addition we have shown how under the Alabama Act, sub-section (d) of Section 4, Acts of Alabama of 1935, page 950, this petitioner and all others coming under the Social Security Act were required to pay one per centum of their wages earned after May 1, 1936, into this Unemployment Trust Fund held by the United States.

We have discussed the title and right of this petitioner in such trust held by the United States.

The decision of the Supreme Court of Alabama, here sought to be reviewed, is a determination of whether or not the petitioner is entitled to receive unemployment benefits out of such trust fund so held. It is impossible to escape the conclusion that the decision of the Alabama Court was of a Federal question. If the decision of the Alabama Court is final as to the right of this petitioner and others in Ala-

bama to this trust fund, then the Alabama Court has final jurisdiction of the administration and control of such trust fund, even though it is held by the United States in trust for employees throughout the United States, whether in Alabama or elsewhere.

If the Alabama decision is final, then the decision of the Supreme Courts of every State, which has passed a similar Act and which has been coordinated with the Social Security Act, has final jurisdiction with reference to the administration and control of such trust fund. This could possibly lead to forty-eight different rules of regulations and control of such fund. It could possibly give to the various Supreme Courts throughout the United States final control over the administration of at least certain provisions of the Federal Social Security Act itself.

We respectfully insist that this coordination, this creation of a trust fund, places final jurisdiction of such coordinated plan in this Honorable Court. It is for this Court to say finally whether or not this petitioner is barred from participating in such trust fund in this matter.

**(E) The Supreme Court of Alabama has decided a Federal question of substance not theretofore determined by this Court.**

The requirements of Supreme Court Rule 38, Section 5 (a), are met by this petition. While the Alabama Unemployment Act, as shown above, has been before this Court several times, there has never been presented to this Court under such Act the question herein presented.

The question herein presented is a Federal question of substance. This petitioner is one of about seventeen thousand miners in Alabama whose cases are pending involving this question. This question affects every employee,

whether coal miner or not, throughout the United States, who comes under the Social Security Act and its coordinated State acts.

**(F) The questions here presented were presented to the State Court.**

The Federal question herein presented could not have been anticipated. We certainly had no right to conclude that the Court of Appeals of Alabama or that the Supreme Court of Alabama was going to give a definition to "labor dispute" which would include collective bargaining. The questions here presented were incorporated in the application for rehearing to the Court of Appeals of Alabama (R. 280). They were then incorporated in the petition for writ of certiorari to the Supreme Court of Alabama (R. 281-283). They were next presented to the Supreme Court of Alabama in an application for rehearing (R. 286-288). They were presented at the first possible opportunity to the Alabama courts. In the case of *State of Missouri, etc.* v. *Gehner, etc.*, 50 Supreme Court Reporter 326, 281 U. S. 313, writ of certiorari was granted where a Federal question was first raised in petition for rehearing on the ground that petitioner had no reason to anticipate the ruling.

The Circuit Court of Alabama allowed benefits to the petitioner. The Department of Industrial Relations appealed from this ruling to the Court of Appeals of Alabama. There was nothing for us to object to in the Circuit Court, as the ruling was in favor of petitioner. There was no opportunity to raise such question. There was no reason to anticipate that an interpretation was going to be given to the Act inconsistent with the fundamental Federal plan for collective bargaining and Social Security, especially when the Social Security Act and the Alabama Act had been coordinated.

**Conclusion.**

We respectfully pray the issuance of the writ of certiorari.

Respectfully submitted,

ROSSIE ROGERS,
*Attorney for Petitioner.*

HUGH A. LOCKE,
YELVERTON COWHERD,
*Of Counsel.*

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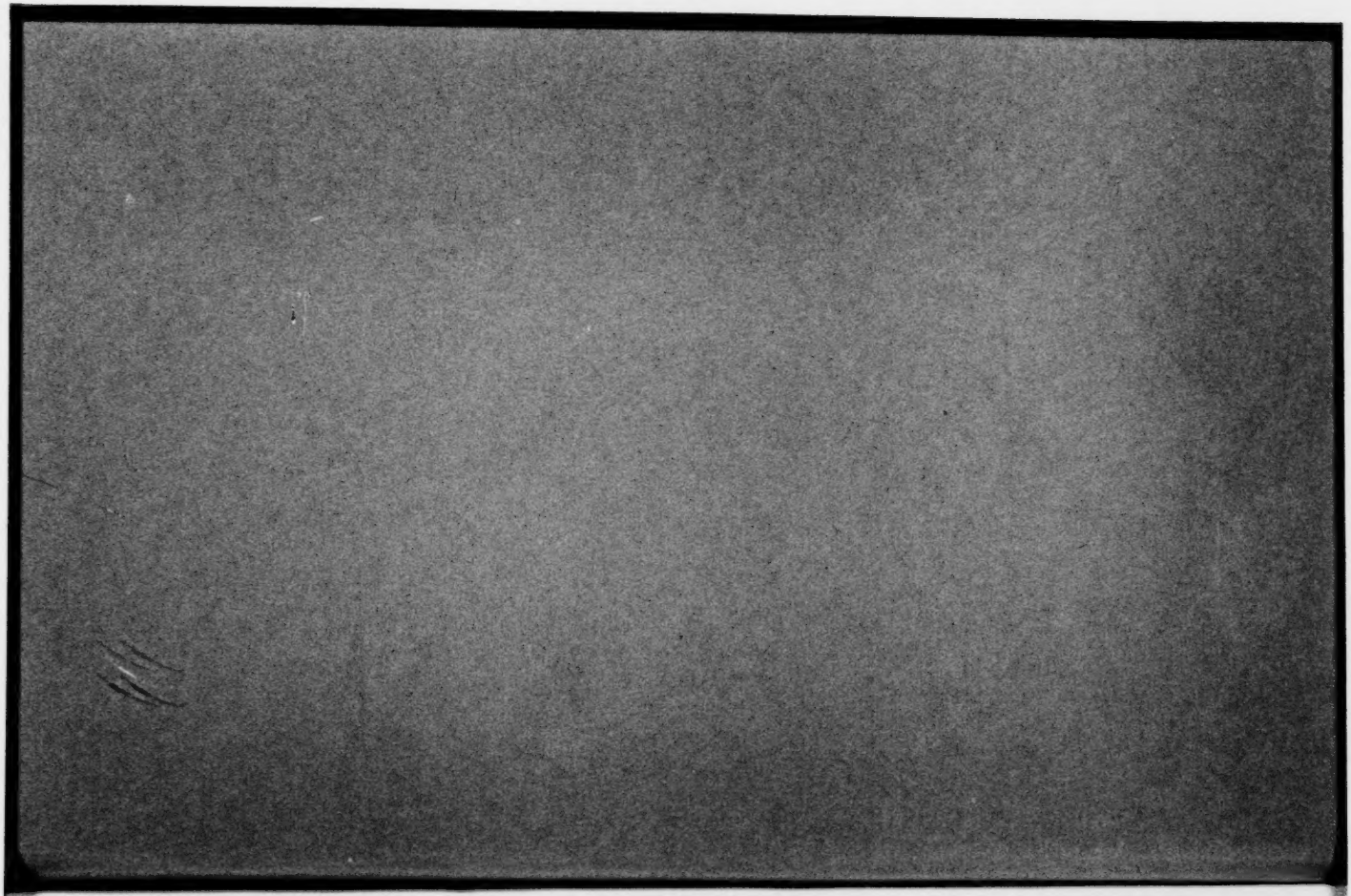

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1940

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No. 1011

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ALTON RUFUS PESNELL,

*Petitioner,*

*v.*

DEPARTMENT OF INDUSTRIAL RELATIONS OF ALABAMA,

*Respondent.*

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**BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI**

## BRIEF AND ARGUMENT

### I

Respondent does not concede the correctness of the claims presented in the petition with respect to "Statement of Matters Involved" nor "Jurisdictional Statement", but for the purposes of this brief, will confine itself to the following argument:

### II

On pages 5 and 6 of the petition, the petitioner enumerates the three questions which he says he is presenting for consideration by this Court. These questions will be considered in the order there appearing.

**(1) The first question presented is said to be this:**

> "1. Does the decision of the Supreme Court of Alabama, interpreting 'labor dispute' as used in Section 6 of the Alabama Unemployment Compensation Act (Acts of Alabama of 1935, page 950), so as to include mere argument or debate by representatives when bargaining for a new contract, and denying benefits, render said Alabama statute repugnant to the Federal law giving collective bargaining and unemployment benefits?" (Petition page 5.)

The gravamen of this complaint is, not that the Supreme Court of Alabama erroneously defined the

term "labor dispute" as used in Section 6 of the Alabama Act, but that with the definition of labor dispute, as announced by the Supreme Court of Alabama, the statute then becomes "repugnant to the Federal law giving collective bargaining and unemployment benefits."

We take it as conceded by petitioner that this Court will not interfere with the State Court's construction of its own statute.

His position is that had the definition of the words "labor dispute", as recently announced by the Supreme Court, been originally written into the statute by the Legislature, the law would have been "repugnant to the Federal law giving collective bargaining and unemployment benefits"; that is to say, the statute would have offended (a) the Social Security Act approved August 14, 1935, and (b) the National Labor Relations Act.

(a) Let us first consider the Social Security Act.

When the Social Security Board approved Alabama's 1935 Unemployment Compensation Act, as it was required to do by Title IX of the Federal Act, it approved it with the words "labor dispute" therein undefined. It must be assumed, therefore, that the Social Security Board approved the Alabama statute knowing that these words might be given the interpretation which they have in fact been given by the Supreme Court of Alabama. It is not alleged that the meaning ascribed to these words by the Alabama Court is arbitrary, illogical or palpably erroneous. Unless, therefore, petitioner can successfully attack

the definition of the term "labor dispute" given it by the Alabama Court, the Act stands approved by the Social Security Board.

We do not apprehend that the scope of this proceeding encompasses a discussion of the correctness of the definition given the term "labor dispute" by the Alabama Court.

(b) With respect to the National Labor Relations Act.

Nowhere in the National Labor Relations Act is it guaranteed to petitioner or to others situated as he was, that while collectively bargaining, he should receive any special consideraion under the Social Security Act or State laws enacted pursuant thereto. The National Labor Relations Act does not declare it to be an unfair labor practice for a State to deny payment of unemployment compensation under any circumstances. It is not declared to be the policy of the Act to require the strengthening of the economic position of employees while engaged in collective bargaining by the payment of unemployment compensation benefits. There is no phase of the National Labor Relations Act designed in any degree to affect an employee's eligibility for benefits under State Unemployment Compensation laws. There is no relationship, statutorily stated, between the payment of unemployment compensation and the right of collecive bargaining.

**(2) The second question presented by petitioner is:**

"2. Is the right to collective bargaining, or the interest of an employee in the Unemployment Trust Fund, a title, right, privilege or immunity, protected under the Fourteenth Amendment to the Constitution of the United States, and does the interpretation of 'labor dispute' and the denial of benefits, decreed by the Supreme Court of Alabama, give the Alabama statute a meaning which is in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, or of Federal statutes?" (Petition page 6.)

Without conceding that it is so, let it be assumed that (a) the right to collective bargaining and (b) the interest of an employee in the Unemployment Trust Fund, if there could be said to be such an interest, is each a right protected by the Fourteenth Amendment. The petitioner charges that these rights have been denied to him without due process of law.

The Fourteenth Amendment guarantees (1) judicial regularity with respect to the means and methods by which a right is denied, and (2) Legislative regularity with respect to the nature of the statute questioned.

First: With respect to judicial regularity, the record shows that in this case, before petitioner was denied his claim to compensation, there was an initial investigation by a Field Examiner of the State, a review of his findings by a tribunal created by State statute before which both parties were fully heard, a re-trial de novo in the Circuit Court, a court of general jurisdiction, a review in the State Court of Appeals, and finally, a review in the Alabama Supreme

Court. Certainly the plaintiff had his opportunity to be heard.

Secondly: As to the Constitutional correctness of the statute as it stands with the words "labor dispute" defined by the Supreme Court in this case. Applying the test long since established by this Court:

(a) The Act is definite and capable of being understood;

(b) It has a reasonable relation to legitimate Legislative purpose in that it defines, as it was necessary to do, the eligibility requirements for unemployment compensation;

(c) It is not arbitrary for the reason that there is strong public policy behind the Legislative purpose to afford no assistance to either party engaged in a labor dispute, and finally,

(d) It applies equally to all similarly situated and in no sense singles out petitioner for penalities or burdens not imposed on all others in his class.

**(3) The third question presented by petitioner is:**

> "3. Does the coordination of the Social Security Act with the Alabama Unemployment Compensation Act, and with similar acts of other States, and the creation of the Unemployment Trust Fund held by the United States and jointly administered by it with the several States, make the payment or nonpayment of benefits from such fund a Federal question, or are the decisions of

the several States final as to the control and operation of such trust fund?" (Petition page 6.)

The Social Security Act, approved August 14, 1935, at Title III, provides for grants to states for unemployment compensation, and, under the provisions of Title IX, levies a tax on employers of eight or more. The provisions of these titles are the only ones relating to unemployment compensation in the Act. Nowhere in these titles is there any provision for the control or determination of eligibility of claimants for unemployment benefits nor were there standards of any kind established in the Federal Social Security Act with respect to benefits, amount, duration, eligibility of workers, or disqualification of workers. Benefits are adjusted, state by state, through their separate laws governing the amount of money made available for benefit payments and eligibility conditions. The only requirement made of the State laws by the Social Security Act, approved August 14, 1935, with respect to the unemployment trust fund appears at Section 303(a) (4) and (5), which is as follows:

"Sec. 303. (a) The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provision for—

* * *

"(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

"(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust Fund, in the payment of unemployment compensation, exclusive of expenses of administration; * * *"

At Section 904, provision was made for the establishment in the Treasury of the United States of a trust fund to be known as the Unemployment Trust Fund, but, in providing for the establishment of the trust fund, the Federal law did not make provision whereby it was to be jointly administered by the Federal government and the several states. The return of this trust fund to the State on proper requisition is a Federal function, the payment of the money to the individual claimant is a State function.

## CONCLUSION

For the reasons above set forth, there has been no violation of petitioner's right under the Social Security Act of 1935 nor under the National Labor Relations Act, nor an invasion of his right to due process of law and the equal protection of the laws as guaranteed by the Fourteenth Amendment, and we respectfully suggest that the Petition for the Writ of Certiorari be denied.

Respectfully submitted,

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A copy of the foregoing brief has been served upon the attorney for the petitioner before the filing thereof in this Court, on this the 23rd day of May, 1941.

James A. Simpson

JAMES A. SIMPSON, of Counsel for Respondent.